

STATE SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement and Release ("Agreement") is entered into between the State of Michigan ("the State") and Omnicare, Inc. ("Omnicare"), through their authorized representatives, hereinafter collectively referred to as "the Parties".

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Omnicare is a Delaware corporation, headquartered in Covington, Kentucky, that specializes in providing pharmacy services to long term care facilities.

B. Omnicare is a defendant in the following five *qui tam* actions:

1. *United States ex rel. Adam B. Resnick v. Omnicare, Inc., National Senior Care, Inc., SavaSenior HealthCare, Inc., and Rubin Schron*, Civil Action No. 06-10149-RGS (D. Mass.);

2. *United States et al. ex rel. David M. Kammerer v. Omnicare, Inc., Abbott Laboratories, Alza Corporation, AstraZeneca Pharmaceuticals, Barr Pharmaceuticals, Bayer Corporation, Omnicare & Company, GlaxoSmithKline, Hoffman-LaRoche, Inc., Johnson & Johnson, Merck & Co., Inc., Novartis Corporation, Novo Nordisk, Inc., Pharmacia Corp., Pfizer, Inc., and Wyeth-Ayerst*, Civil Action No. 05-11518-RGS (D. Mass.);

3. *United States et al. ex rel. David M. Kammerer v. Omnicare, Inc., IVAX Pharmaceuticals, PurePac Pharmaceutical Co., SANDOZ Inc., and Watson Pharma, Inc.*, Civil Action No. 05-11519-RGS (D. Mass.);

4. *United States et al. ex rel. Deborah Maguire v. Omnicare, Inc.*, Civil Action No. 02-11436-RGS (D. Mass.); and

5. *United States ex rel. Bernard Lisitza v. TAP Pharmaceutical Products, Inc. and Omnicare, Inc.*, Civil Action No. 07-10026-RGS (D. Mass.)

The *qui tam* actions identified above are referred to collectively as the "Civil Actions."

C. Omnicare has entered into a separate civil settlement agreement (the "Federal Settlement Agreement") with the United States (as that term is defined in the Federal Settlement Agreement).

D. The State contends that Omnicare submitted or caused to be submitted claims for payment to the State's Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396(v).

E. The State contends that it has certain civil and administrative causes of action, as specified immediately below, against Omnicare for knowingly submitting or causing false and fraudulent claims to be submitted to the State's Medicaid Program (hereinafter "the Covered Conduct"):

1. From December 2004 through December 2006, Omnicare knowingly submitted, or caused to be submitted, drug reimbursement claims to Medicaid and Medicare that were false or fraudulent because they resulted from a \$50 million payment that Omnicare paid to nursing home chains Mariner and Sava in violation of the federal anti-kickback statute, 42 U.S.C. § 1320a-7b(b)(2) (the "Anti-Kickback Statute"). On December 10, 2004, in exchange for the payment, Mariner and Sava entered into 15-year contracts pursuant to which Mariner and Sava agreed to refer their nursing home patients to Omnicare for the patients' drug purchases, including drug purchases covered by Medicaid and Medicare.
2. From January 2000 through June 2004, Omnicare knowingly submitted, or caused to be submitted, drug reimbursement claims to Medicaid that were false or fraudulent because they resulted from \$8 million in payments that Omnicare solicited and received from IVAX in violation of the Anti-Kickback Statute. The purpose of the payments was to induce Omnicare to purchase \$50 million in generic drugs from IVAX and to recommend that physicians

prescribe those drugs for their nursing home patients, including patients covered by Medicaid.

3. From September 1, 2005 through September 1, 2008, Omnicare knowingly submitted, or caused to be submitted, drug reimbursement claims to Medicaid and Medicare that were false or fraudulent because they resulted from remuneration that Omnicare provided to nursing homes in the form of consultant pharmacist services at rates below Omnicare's cost of providing the services and below fair market value (as that term is used in 42 C.F.R. § 1001.952), in violation of the Anti-Kickback Statute. An HHS regulation, 42 C.F.R. § 483.60(c), requires that, in each nursing home, "[t]he drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist [known as a 'consultant pharmacist']". In order to induce nursing homes to enter into contracts with Omnicare to use Omnicare's dispensing pharmacist services and to purchase drugs from Omnicare, Omnicare offered, and nursing homes accepted, consultant pharmacist services at rates below Omnicare's cost of providing the services and below fair market value. Omnicare and nursing homes then entered into separate consultant pharmacist services contracts. As reaffirmed by the Office of the Inspector General in its Supplemental Compliance Program Guidance for Nursing Facilities, 73 Fed. Reg. 56832 (Sept. 30, 2008), those consultant pharmacist services contracts between Omnicare and nursing homes implicated the Anti-Kickback Statute because, *inter alia*, they involved the provision of services at below cost and/or below fair market value.
4. From January 1999 through December 2004, Omnicare knowingly submitted, or caused to be submitted, false or fraudulent claims to Medicaid for Risperdal, an antipsychotic drug. The claims were false or fraudulent because: they resulted from payments that Omnicare solicited and received from Risperdal's manufacturer, Johnson & Johnson, from 1999 through 2004, in violation of the Anti-Kickback Statute. The payments included: (a) quarterly rebate payments on Omnicare's purchases of Risperdal under rebate agreements executed in April 1997 and March 2000 where the rebate agreements conditioned payment of the rebates upon Omnicare engaging in an "active intervention program" to convince physicians to prescribe Risperdal and requiring that all competitive anti-psychotic products be "Prior Authorized for Risperdal failure," and where Omnicare failed to disclose to physicians that such intervention activities were a condition of it receiving such rebate payments; and (b) payments ostensibly for the purpose of purchasing prescribing data from Omnicare, making educational grants, and sponsoring and attending Omnicare meetings, when in fact one purpose of the payments was to induce Omnicare to recommend that physicians prescribe Risperdal to their nursing home patients, including patients covered by Medicaid.

F. This Agreement is neither an admission of facts or liability by Omnicare nor a concession by the State that its claims are not well-founded. Omnicare denies the contentions of the State as set forth herein and in the Civil Actions and further denies any liability or wrongdoing related to those contentions.

G. To avoid the delay, expense, inconvenience and uncertainty of protracted litigation of these claims, the Parties mutually desire to reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. Omnicare agrees to pay to the United States and the Medicaid Participating States, collectively, the sum of ninety-eight million dollars (\$98,000,000), plus interest accrued thereon at a rate of 3.25% per annum from June 24, 2009, and continuing until and including the day before complete payment is made (the "Settlement Amount"). The Settlement Amount shall be paid as follows:

(a) Omnicare shall pay to the United States the sum of sixty-one million fifty thousand nine hundred forty dollars (\$61,050,940), plus interest accrued thereon at a rate of 3.25% per annum (\$5,436 per day) from June 24, 2009, and continuing until and including the day before complete payment is made (the "Federal Settlement Amount"). Omnicare agrees to pay the Federal Settlement Amount to the United States by electronic funds transfer pursuant to written instructions agreed to by the

United States and Omnicare. Omnicare agrees to make this electronic funds transfer no later than seven business days after the Effective Date of the Federal Settlement Agreement.

(b) Omnicare shall pay to the Medicaid Participating States the sum of thirty-six million nine hundred forty-nine thousand sixty dollars (\$36,949,060), plus interest accrued thereon at a rate of 3.25% per annum (\$3,290 per day) from June 24, 2009, continuing until and including the day before complete payment is made (the "Medicaid State Settlement Amount"), under the terms and conditions of the Medicaid State Settlement Agreements. This Medicaid State Settlement Amount shall be paid by electronic funds transfer pursuant to written payment instructions from the National Association of Medicaid Fraud Control Units ("NAMFCU") negotiating team for the Medicaid Participating States. Payment shall be made to the Medicaid Participating States no later than seven (7) business days after Omnicare receives written payment instructions from the NAMFCU and following the earliest of the dates on which the following occurs:

(i) the individual Medicaid State Settlement Agreements from the Medicaid Participating States are fully executed by the States and delivered to Omnicare's attorneys; or

(ii) as otherwise agreed in writing by Omnicare's attorneys and the NAMFCU team.

(c) States which execute a Medicaid State Settlement Agreement in the form to which Omnicare and the NAMFCU team have agreed, or in a form otherwise agreed to by Omnicare and an individual State, shall be defined as "Medicaid Participating States."

Absent Omnicare's consent, no State may become a Medicaid Participating State if it has not executed a Medicaid State Settlement Agreement within 60 days of receipt.

(d) The total portion of the Settlement Amount paid by Omnicare in settlement for the Covered Conduct to the State is \$1,987,132.77, consisting of a portion paid to the State under this Agreement and another portion paid to the Federal Government as part of the Federal Settlement Agreement. The individual portion of the Medicaid State Settlement Amount allocated to the State under this Agreement is the sum of \$888,407.89, plus applicable interest.

2. Contingent upon the receipt of their appropriate portion of the Medicaid State Settlement Amount, the Medicaid Participating States agree to pay, as soon as feasible after such receipt, agreed-upon amounts that have been addressed via side letters to the Relators in the Civil Actions in which one or more states are parties.

3. Subject to the exceptions in Paragraph 5 below, and in consideration of the obligations of Omnicare in this Agreement, and conditioned upon receipt by the State of its share of the Medicaid State Settlement Amount, the State, on behalf of itself, and its officers, agents, agencies, political subdivisions, and departments, agrees to dismiss with prejudice any claim against Omnicare for the Covered Conduct and release Omnicare, its predecessors and current and former parents, divisions, related entities as named in Appendix A, subsidiaries, successors, transferees, heirs, and assigns (collectively, the "Omnicare Released Entities"), from any civil or administrative monetary cause of action that the State has for any claims submitted or caused to be submitted to the State Medicaid Program for the Covered Conduct.

4. The State does not agree to release individuals from claims it has or may have for the Covered Conduct, except that, if any present or former Omnicare officers, directors or

employees are legally entitled to repayment, or advancement of expenses, from Omnicare, for indemnification, contribution, or reimbursement or otherwise as a result of a claim brought by the State for the Covered Conduct, the release provided in Paragraph 3 shall apply to such individuals with respect to that claim.

5. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities: (a) any criminal, civil, or administrative claims arising under state revenue codes; (b) any criminal liability; (c) any civil liability that Omnicare has or may have under any state statute, regulation, or rule not expressly covered by this Agreement, including, but not limited to any civil liability for state antitrust violations; any liability for claims involving unfair and/or deceptive acts and practices; any liability under the State's consumer protection laws which any person or entity has or may have to individual consumers or state program payors other than the Medicaid Program; (d) any liability to the State (or any agencies thereof) for any conduct other than the Covered Conduct; (e) any liability based upon obligations created by this Agreement; (f) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from the State's Medicaid program; (g) any express or implied warranty claims or other claims for defective or deficient products and services provided by Omnicare; (h) any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; (i) any liability based on a failure to deliver items or services due; (j) any liability which may be asserted by private payors or insurers, including those that are paid by a state's Medicaid program on a capitated basis; or (k) any liability related to the improper inflation of Average Wholesale Prices and Wholesale Acquisition costs.

6. In consideration of the obligations of Omnicare set forth in this Agreement, and the Amended and Restated Corporate Integrity Agreement ("CIA") that Omnicare has entered into with the Office of the Inspector General of the United States Department of Health and Human Services ("HHS-OIG") in connection with this matter, and conditioned on receipt by the State of its share of the State Medicaid Settlement Amount, except as reserved in Paragraph 5 above the State agrees to release and refrain from instituting, recommending, directing or maintaining any administrative claim or any action seeking exclusion from the State's Medicaid program against the Omnicare Released Entities for the Covered Conduct. Nothing in this Agreement precludes the State from taking action against Omnicare in the event that Omnicare is excluded by the federal government, or for conduct and practices other than the Covered Conduct, or as a result of conviction of Omnicare in a criminal action.

7. Omnicare waives and shall not assert any defenses it may have to criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution, or the Excessive Fines Clause of the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

8. In consideration of the obligations of the State set forth in this Agreement, Omnicare waives and discharges the State, its agencies, political subdivisions, employees, servants and agents from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) which Omnicare has asserted, could have asserted, or may assert in the future against the State, its agencies, political subdivisions, employees, servants and agents, arising from the State's investigation and prosecution of the Covered Conduct.

9. The amount that Omnicare must pay to the State pursuant to Paragraph 1 above

will not be decreased as a result of the denial of claims for payment now being withheld from payment by the State's Medicaid program, or any other state payor, for the Covered Conduct; and Omnicare agrees not to resubmit to the State's Medicaid program or any other state payor, any previously denied claims, which denials were based on the Covered Conduct, and agrees not to appeal or cause the appeal of any such denials of claims.

10. Omnicare shall not seek payment for any of the claims for reimbursement to Medicaid covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors.

11. Omnicare agrees to the following:

(a). Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v, and in the regulations and official program directives promulgated thereunder) incurred by or on behalf of each of Omnicare and its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "Unallowable Costs" on government contracts and under the State Medicaid Program:

- (1) the matters covered by this Agreement;
- (2) the United States' and Participating States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Omnicare's investigation, defense, and corrective actions undertaken in response to the United States' and Participating States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);

- (4) the negotiation and performance of this Agreement;
- (5) the payments Omnicare makes to the United States and Participating States' pursuant to this Agreement and any payments that Omnicare may make to any or all of the Relators, including costs and attorney's fees; and
- (6) the negotiation of the CIA, and the performance of obligations undertaken pursuant to the CIA to:
 - (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and
 - (ii) prepare and submit reports to OIG-HHS.

However, nothing in this paragraph III. 10. (a) (6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to Omnicare. (All costs described or set forth in this Paragraph III. 10. (a) (6) are hereafter "Unallowable Costs.")

(b) Future Treatment of Unallowable Costs: These Unallowable Costs shall be separately determined and accounted for in nonreimbursable cost centers by Omnicare, and Omnicare shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Omnicare or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment:
Omnicare further agrees that, within 90 days of the Effective Date of this Agreement, it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors,

and Medicaid and FEHBP fiscal agents, any Unallowable Costs included in payments previously sought from the United States or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Omnicare or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. Omnicare agrees that the State, at a minimum, shall be entitled to recoup from Omnicare any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the State pursuant to the direction of the affected agencies. The State reserves its rights to disagree with any calculations submitted by Omnicare or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs on Omnicare or any of its subsidiaries' or affiliates' cost reports, cost statements, or information reports.

(d) Nothing in this Agreement shall constitute a waiver of the rights of the State to audit, examine, or re-examine Omnicare's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

12. Omnicare expressly warrants that it has reviewed its financial condition and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(B)(ii)(I), and shall remain solvent following payment of the Settlement Amount under the Federal Settlement Agreement and the Agreements with the Medicaid Participating States. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (a) have

intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Omnicare within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

13. Omnicare agrees to cooperate fully and truthfully with any state investigation of individuals and entities not released in this Agreement concerning the Covered Conduct. Upon reasonable notice, Omnicare shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage the cooperation of, former directors, officers, and employees, for interviews and testimony, consistent with the rights and privileges of such individuals in connection with such investigation. Upon reasonable request, Omnicare agrees to furnish to the State copies of documents in its possession, custody and control concerning the Covered Conduct, unless such material is covered by a valid claim of attorney-client privilege, work product doctrine, common interest doctrine or the like. Nothing in this Agreement is intended by Omnicare as a waiver of any such privilege, and the State agrees not to argue that anything in this Agreement constitutes such a waiver. Omnicare shall be responsible for all of the costs it may incur in complying with this paragraph.

14. The Parties each represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

15. Except as expressly provided to the contrary in this Agreement, each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Except as otherwise stated in this Agreement, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

17. Nothing in this Agreement constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of the State's revenue code or Internal Revenue laws.

18. In addition to all other payments and responsibilities under this Agreement, Omnicare agrees to pay all reasonable travel costs and expenses of the NAMFCU Negotiating Team. Omnicare will pay this amount by separate check or wire transfer made payable to the National Association of Medicaid Fraud Control Units after the Medicaid Participating States execute their respective Agreements or as otherwise agreed by the Parties.

19. This Agreement is governed by the laws of the State.

20. The undersigned Omnicare signatories represent and warrant that they are authorized as a result of appropriate corporate action to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their respective agencies and departments.

21. The "Effective Date" of this Agreement shall be the date of signature of the last signatory to this Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement.

22. This Agreement shall be binding on all successors, transferees, heirs and assigns of the Parties.

23. This Settlement Agreement constitutes the complete agreement between the Parties with respect to this matter and shall not be amended except by written consent of the Parties.


24. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same Agreement.

STATE OF MICHIGAN

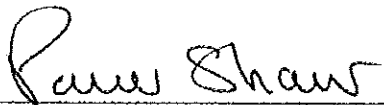
By: Elizabeth Valentine Dated: 12/10/09
[Name] Elizabeth Valentine (P28872)
[Title] Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL

By: Stephen Fitton w/permission Dated: 12/10/09
[Name] Stephen Fitton by E. Valentine
[Title] Acting Medicaid Director
Medicaid Program: Michigan Department of Community Health

OMNICARE, INC.

By:  Dated: 4/13/10
THOMAS R. MARSH
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Counsel to Omnicare, Inc.

By:  Dated: 4/14/10
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